

Memorandum of Understanding
Between
USDA - Forest Service
USDI - Bureau of Land Management
And
USDI - Fish and Wildlife Service
To Promote the Conservation of Migratory Birds
draft 12/4 3:20 version

This Memorandum of Understanding (MOU) is entered into by and between the USDA Forest Service (Forest Service), USDI Bureau of Land Management (BLM) and the USDI Fish and Wildlife Service (Fish and Wildlife Service), collectively referred to as the Parties.

A. Purpose

This MOU meets the requirements of the Executive Order 13186, signed by the President (66 FR 3853, January 17, 2001), on the responsibilities of federal agencies to protect migratory birds. The purpose of this MOU is to strengthen migratory bird conservation by identifying and implementing strategies that promote conservation and minimize the take of migratory birds through enhanced collaboration between the Forest Service, BLM and the Fish and Wildlife Service, in coordination with state, tribal, and local governments. Specific activities are identified where cooperation between the Parties will substantially contribute to conservation and management of migratory birds, their habitats, and associated values important to the people of the United States of America.

B. Statement of Mutual Interest and Benefit

All Parties have interests and responsibilities in the conservation and management of America's natural resources. The Parties agree that migratory birds are important components of biological diversity; their conservation and management will help sustain ecological integrity, and will meet the growing public demand for outdoor recreation, conservation education, wildlife viewing, and hunting opportunities. Migratory birds are important economically and support communities and businesses.

The Forest Service is recognized as a conservation leader internationally and plays a pivotal role in conservation of migratory bird populations and their habitats, including many nationally and internationally important bird areas. The Forest Service provides programs and expertise in: (1) National Forest System, (2) State and Private Forestry, (3) Research and Development, and (4) International Programs. The Forest Service is responsible for management of the national forests and grasslands, comprising 192

million acres in 44 states, and has a legal mandate to provide habitat for viable populations of migratory birds.

The BLM is recognized as a national conservation leader and plays a pivotal role in conservation of migratory bird populations and their habitats, including many nationally and globally important bird areas. The BLM provides programs and expertise in public land and resource management. The BLM is responsible for management of Public Land comprising 264 million acres, and has an legal mandate to provide habitat for migratory birds.

The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The U.S. Fish and Wildlife Service's Migratory Bird Program serves as a focal point in the United States for policy development and strategic planning, program implementation, and evaluation of actions designed to conserve migratory birds and their habitats. The U.S. Fish and Wildlife Service is legally mandated to implement the conservation provisions of the Migratory Bird Treaty Act, which includes responsibilities for population management (e.g., monitoring), habitat protection (e.g., acquisition, enhancement, and modification), international coordination, and regulations development and enforcement.

In consideration of these premises, the Parties agree as follows:

C. All Parties Shall:

1. Within established authorities, and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive planning efforts for migratory birds such as Partners In Flight Bird Conservation Plans, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and the integration of those and other bird conservation planning efforts through the North American Bird Conservation Initiative.
2. Strive to protect, restore, enhance, and manage habitat of migratory birds, and prevent the loss or degradation of remaining habitats on National Forests and BLM land. Emphasize a collaborative approach to migratory bird conservation in cooperation with other governments, state and federal agencies, and non-federal partners. The parties shall incorporate migratory bird conservation goals, objectives, and reasonable measures into agency planning processes by collaboratively:
 - a) Defining integrated migratory bird conservation goals and objectives for each Bird Conservation Region (BCR), using best available information including, but not limited to Partners In Flight Bird Conservation Plans, Joint Venture plans, existing

Land and Resource Management Plans, published literature, and related documentation. Goals and objectives should address, at a minimum, habitat and ecological conditions needed by species of concern for successful reproduction, migration, and over-wintering, including Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, Ramsar sites, and other significant sites that occur on Forest Service and BLM lands.

- b) Identifying habitat areas and ecological conditions within each BCR where specific management action is needed in order to achieve the migratory bird conservation goals and objectives identified in C.2.a. Special consideration should be given to important nesting areas, migration stop-over areas, wintering habitats, and other limiting habitats.
- c) Identifying types of management actions or categories of actions whose expected impacts may be expected to deter attainment or maintenance of goals and objectives identified in C.2.a., particularly with respect to areas identified in C.2.b.
- d) Developing *reasonable measures* for each BCR that would protect and/or conserve habitat areas, maintain, restore or enhance ecological conditions, avoid or reduce take of migratory birds, and reduce the expected adverse impacts of an action or categories of actions. Reasonable measures may be designed to avoid impact, or where avoidance is not practicable, minimize impact, rectify the impact, reduce or eliminate the impact over time, or compensate for impacts. Reasonable measures would be developed in cooperation with a variety of partners.
- e) Developing, within two years, reasonable measures for the following categories of actions: forest management, rangeland management, fire management, and energy development. Within five years, identify other major categories of actions likely to have a measurable negative effect on migratory birds, and develop reasonable measures for those categories of actions that may impact migratory birds (e.g, recreation management).
- f) Designing, within 3 years, a monitoring programs to determine: (a) the effectiveness of reasonable measures in meeting migratory bird goals and objectives, and (b) the appropriateness of reasonable measures in assuring that migratory bird goals and objectives are attained.
- g) Refining reasonable measures when it is determined, through monitoring, that migratory bird goals and objectives are not being attained with the application of existing reasonable measures.

3. Collaborate with State Foresters, State Wildlife Agencies, tribal governments, non-government organizations, and willing private landowners to identify, protect, restore and enhance habitat of priority migratory bird species, and prevent the further loss or degradation of remaining habitats on non-federal lands, particularly in Bird Conservation Regions where National Forest System and BLM lands are located. This includes:

- a) Participating in efforts to identify, protect, restore and enhance Important Bird Areas that occur in landscapes or watersheds that might be impacted by activities on public lands.
- b) Developing and integrating information on migratory bird resources into outreach and education activities.
- c) Exploring opportunities for cooperation in using easements, exchanges, etc. to protect Important Bird Areas and other special migratory bird habitats on non-federal lands with willing landowners.

4. Promote migratory bird conservation internationally, working with domestic and international partners as appropriate or relevant to agencies authorities. This includes:

- a) Assisting other nations, as appropriate, in sustaining migratory bird populations and habitats through technical cooperation, policy development, and disaster assistance, including conservation planning, project support, cooperative studies, education and training.

5. Promote collaborative inventory, monitoring, management studies, research, and information exchange related to the conservation of migratory birds and management of their habitats. This includes:

- a)Developing inventory and monitoring programs, at appropriate scales, with national standardized protocols, to assess the status and trends of bird populations and habitats, with increased emphasis on migrating and wintering birds.
- b) Designing management studies and research using national standardized protocols and programs, such as BBIRD, to identify the habitat conditions needed by priority migratory bird species, to understand inter-relationships of co-existing species, and to evaluate the effects of management activities on habitats and populations of migratory birds.
- c). Sharing inventory, monitoring, research, and study data for breeding, migrating, and wintering populations, and habitats, in a timely fashion with national data repositories such as Breeding Bird Survey, BBIRD, and MAPS.

- d) Explore opportunities for increased partnerships, for collaborative funding for inventory, monitoring, management studies and research.

6. Provide training on migratory bird population and habitat inventory, management, and monitoring methods and practices. This includes:

- a) Developing interactive computer assisted training tools, website modules and/ or other processes for web-based learning.
- b) Developing and sponsoring training regarding management practices that avert detrimental impacts to migratory birds.
- c) Developing and sponsoring training regarding inventory and monitoring to determine habitat and population conditions and trends, and to evaluate effects of management activities on bird populations and habitats.

7. Participate annually, or as needed, in the interagency Council for the Conservation of Migratory Birds to evaluate the implementation of this MOU. The Council duties include:

- a) Sharing the latest resource information to assist in the conservation and management of migratory birds.
- b) Developing an annual report of accomplishments and recommendations related to Executive Order 13186.
- c) Fostering partnerships to further the goals of the Executive Order.
- d) Selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

D. The Forest Service and BLM Shall:

- 1. Follow all migratory bird permitting requirements for activities subject to 50 CFR § 21.22 (banding or marking), § 21.23 (scientific collecting), § 21.26 (special Canada goose permit), § 21.28 (falconry), § 21.30 (raptor propagation), or § 21.41 (depredation). No permit is required to take birds in accordance with §§ 21.43 – 21.47 (depredation orders).
- 2. For all other activities that are likely to have a measurable negative effect on migratory birds, the Forest Service and BLM will comply with the guidelines and procedures set forth in this MOU.

3. Integrate the reasonable measures identified for each BCR into programmatic plans and/or site-specific projects that are developed within each BCR. This would generally occur through adoption, amendment, or revision of agency management plans and associated NEPA processes.
4. Implement inventory and monitoring programs, at appropriate scales, with national standardized protocols, to assess the status and trends of bird populations and habitats, with increased emphasis on migrating and wintering birds within funding and resource capabilities.
5. Implement management studies and research using national standardized protocols and programs, such as BBIRD, to identify the habitat conditions needed by priority migratory bird species, to understand inter-relationships of co-existing species, and to evaluate the effects of management activities on habitats and populations of migratory birds within funding and resource capabilities.

E. The Fish and Wildlife Service Shall:

1. Control, within the scope of its statutorily designated authorities, the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources.
2. Review and revise the Birds of Conservation Concern list at least every 5 years. Maintain updated lists of species of concern.
3. Work to identify special migratory bird habitats (migration corridors, stop-over habitats, ecological conditions important in nesting habitats, etc.) to aid in collaborative planning.

F. Dispute Resolution:

Within one year, procedures will be established to implement the following approach to dispute resolution among the agencies:

1. If BLM or the Forest Service determines that reasonable measures identified for a BCR can not be integrated into a particular action or category of actions, the agency will notify the appropriate Service Ecological Services Field Office in writing prior to implementing the proposed action, providing the rationale for why reasonable measures can not be integrated into a proposed federal action or category of actions, and requesting participation by the Service in identification of alternative measures. The Service will assist the agency with development of alternative reasonable measures that can be applied to the basic design, general

- location, scope, duration, or general timing of the action. The alternative reasonable measures will emphasize avoidance, minimization, and rectifying adverse impacts. In the event that an agreement on reasonable measures is not reached, the issue will be elevated a Regional Dispute Panel for resolution.
2. ~~A~~Regional Dispute Panels (RDP) will be established, within one year, to review the merits of the BLM or Forest Service rationale for why reasonable measures can not be integrated into a proposed federal action or category of actions. The RDP will negotiate to determine alternative reasonable measures to be incorporated into the proposed action or category of actions, which may be different from those identified by Fish and Wildlife Service as described in F.1. If the RDP is unable to reach consensus, the issue will be elevated to a National Dispute Panel for resolution. The RDP will be comprised of one representative from each of the agencies.
 3. A National Dispute Panel (NDP) will be established, within one year, to review the merits of the BLM or Forest Service rationale for why reasonable measures can not be integrated into a proposed federal action or category of actions. The NDP will negotiate to determine alternative reasonable measures to be incorporated into the proposed action or category of actions, which may be different from those identified by Fish and Wildlife Service as described in F.1. or the RDP in F.2. If the NDP is unable to reach consensus, the issue will be elevated to the Secretaries of the Department of Interior and Agriculture for resolution. The NDP will be comprised of one representative from each of the agencies.

G. Definitions:

Action – a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency in cooperation with the Service will further define what the term “action” means with respect to its own authorities and what programs should be included.

BBIRD – the Breeding Biology Research and Monitoring Database is a nationwide initiative that employs nest searches throughout the breeding season in specific habitats to monitor primary demographic parameters such as reproductive success and to relate those parameters to specific habitat features at the nest site and large landscape scales; in collaboration with MAPS, BBIRD provides information useful for identifying the underlying causes of bird population changes identified by the Breeding Bird Survey.

Breeding Bird Survey – a standardized international survey that provides information on population trends of more than 250 species, through volunteer observations of breeding birds located along randomly selected 24.5-mile roadside routes in the United States and

Canada.

Bird Conservation Region (BCR) – a nested hierarchy of ecologically defined geographic units designed to facilitate the delivery of bird conservation actions within the framework of the North American Bird Conservation Initiative.

Comprehensive planning efforts for migratory birds – include Partners In Flight, North American Waterfowl Management Plan, U.S. Shorebird Conservation Plan, Western Hemisphere Shorebird Reserve Network, North American Waterbird Conservation Plan, and the North American Bird Conservation Initiative.

Conservation action – a management action undertaken to improve the conservation status of one or more species of migratory birds; as examples, such actions may include surveys and inventories, monitoring, status assessments, land acquisition or protection, habitat modification, population manipulation, research, outreach, etc.

Conservation planning – strategic and tactical planning of agency activities for the long-term conservation of migratory birds and their habitats.

Conservation recommendation – a recommended conservation or management action found in a strategic or tactical planning document endorsed by one or both Parties, such as those published by any of the comprehensive migratory bird planning efforts.

Federal agency- means an executive department or agency of the U.S. government, including its employees while acting in their official capacity. It does not include non-Federal entities, regardless of Federal funding, involvement, or authorization.

Important Bird Area (IBA) – is one of a network of sites of variable size that are considered vital to the long-term conservation of birds; in the United States, the IBA network is a cooperative venture of the American Bird Conservancy and the National Audubon Society.

Management goal or objective – the desired outcome of a management or conservation action.

Migratory bird – an individual of any species protected by the Migratory Bird Treaty Act; a list of migratory birds can be found in Title 50, Part 10, of the Code of Federal Regulations.

MAPS – The Monitoring Avian Productivity and Survivorship program employs constant-effort mist-net banding throughout the breeding season to monitor primary demographic parameters in small landbirds; in collaboration with BBIRD, MAPS provides information useful for identifying the underlying causes of bird population changes identified by the Breeding Bird Survey.

Priority species – those species that are deemed to be in the greatest need of proactive conservation action to prevent listing as endangered or threatened.

Species of Concern – refers to those species listed in the periodic report “Birds of Conservation Concern”, priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11. This list is available on the Internet at (<http://migratorybirds.fws.gov/reports/specon/tblconts.html>) or by contacting the Service Regional Offices.

Suites of species – groups of species that share the same ecological requirements, face similar threats, and require similar conservation actions (e.g., grassland-nesting birds, cavity-nesting birds, old-growth forest-dependent birds, wetland-dependent birds).

Take – as defined in 50 C.F.R. 10.12, to include pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

H. It is Mutually Agreed and Understood That:

1. The rule will not affect species listed under the Endangered Species Act or listed as agency specific species of concern (e.g., Forest Service Regional Foresters Sensitive Species) as each agency’s responsibilities towards such species remain unchanged.
2. This instrument in no way restricts any Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.
3. Any press releases that reference this MOU, or the relationship established between the Parties of this MOU, shall have prior approval of all Parties.
4. Any information furnished to the Parties under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
5. This instrument in no way diminishes the respective Party’s requirements for conducting environmental analysis, including National Environmental Policy Act requirements.
6. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and

printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award of any contract or other agreement. Any contract or agreement for training or other service must fully comply with all applicable requirements for competition.

7. Meetings will be scheduled periodically to review progress and identify opportunities for advancing the agreements of this MOU.
8. This MOU does not require changes to current contracts, permits, or other third party agreements.
9. This MOU is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
10. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
11. Any Party may terminate this instrument, in whole or in part, at any time before the date of expiration by providing the other Parties with a written statement to that effect. Changes within the scope of this instrument shall be made by the issuance of a trilaterally executed modification.
12. This MOU shall be implemented to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions.
13. The principal contacts for this instrument are as follows:

Jon Andrew, Chief
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Joel D. Holtrop, Director

Wildlife, Fish, Watershed, Air and Rare Plants
USDA Forest Service
P.O. Box 96090
Washington, DC 20090

13. This instrument is executed as of the last date signed below and expires no later than (insert date), at which time it is subject to review and renewal, or expiration.

The Parties Hereto have executed this agreement as of the last date shown below.

Director
US Fish and Wildlife Service

Signature Date

Director
US Bureau of Land Management

Signature Date

Chief
US Forest Service

Signature Date

